Supreme Court, U.S.
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No.

In The

Supreme Court of the United States

Frank and Patti Stanley,

Petitioners

v.

Judge Nanaruth Carpenter,

MCI Superintendent William Johnson,

C.S.S. of Wayne County,

Respondents

On Petition for a Writ of Certiorari

State of Michigan Supreme Court

PETITION FOR WRIT OF CERTIORARI

Date September 20, 2004

Frank J Stanley 9-20-04

Patti L. Stanley 9-20-04

Frank & Patti Stanley Petitioners
Acting in Pro se
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QUESTION(S) PRESENTED

1. Did the lower courts ignore the basic constitutional right of Due Process; such as, no witnesses were allowed to testify on the petitioners' behalf (all subpoenaed dismissed, not asked to return at any time), including the petitioners; exhibits that were limited, false, or objected to, clearly showed bias and selective fact findings; under color of title, numerous social workers did not perform their basic ethical and professional duties?

2. Did the Lower Courts deny the petitioners' the basic inalienable "right to the truth being heard" in this case (The Doctrine of Truth). Our court system should never make the statement, "we are not looking for the accuracy of the information or the truth of it even, what, was this a report that was used as a basis to make a decision..."(Tr. Sept.13, 2002, pg 24, 21-25, Judge Linda Hallmark)

3. Did the Lower Courts err in its use as a standard, the criteria of "arbitrary and capriciousness", which is, *it is the absence of "any good reason" to withhold consent that the decision maker can be seen as arbitrary and capricious.* A better interpretation or description of what exactly is a "good" reason; *should a (proven) false allegation, or lie, in brass terms, be acceptable and/or utilized in our legal processes.*

4. Was the Lower Courts clearly in err in their interpretation of the term "correctness" in the case regarding MCL 710.45. Justice is further convoluted by what exactly should the definition of "correct(ness)", be defined as; is it a "Honest Fact, the Truth, Factual support or is it a State of Mind involving Subjective Rightness, Neutrality of

Decision, Choices without weight; ie... choosing one parent (set) over another parent (set)?

5. Did the Lower Courts by ignoring all safeties put into place by the legislature, such as FCRB hearings (Foster Care Review Board), CPS findings (Child Protection Services), and Doctors reports, still hand down their opinions/orders, show palpable bias?

6. Did the Lower courts by ignoring other issues of law and fact that they admitted to, in Per Curiam, which were not directly pointed out by the petitioner acting in Per Se, deliberately err in an act of omission, where as the court is designed, believed to, and takes an oath to right the wrongs it sees in the course of a case or trial?

LIST OF PARTIES (COUNSEL BELOW)

All parties appear in the caption of the case on the cover page. Representing Attorneys;

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In re Carpenter, unpublished, Mich App No.217634,(December 1999)

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In re Commonwealth ex rel. Children's Aid Society v Gard, 66 A.2d.300, 306 (Pa. 1949), COA BRIEF pg. 40

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In re JK, unpublished opinion per curiam, Supreme Crt.Docket No. 121410, rel'd 5/20/03.....(11)

In re Miller, 433 Mich 331, 337; 445 NW2d 161 (1989).....(5)

In re People v Cole, 417 Mich 523; 339 NW2d 440 (1983)

In re People v Vaughn, 186 Mich App 376, 384; 465 NW 2d 365 (1990),COA BRIEF pg.26

In re Smith v. Organization of Foster Families, 431 U.S. 816, 844-45 (1977), COA BRIEF pg.46

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MCL 712(A)

MCL 712.17(c) & (d)

MCL 722.136

MCL 722.137(F)

MCL 722.621-722.638, spec. 722.633(13)(5)

OTHER SOURCES CITED OR USED

Bryan, Garner A., Editor, Black's Law Dictionary, 7th Ed., (1991).

Bryan, Garner A., Legal Writing in Plain English, (A Text Exercises), University of Chicago Press, 2001.

Feinman, Jay. Law 101, Everything You Need to Know About the American Legal System. Oxford, 2000.

Gifis, Steven H., Barron's Law Dictionary. 4th Ed. Barron's Ed Series, 1996.

Goldstein, Solnit, Goldstein, et al. The Best Interests of the Child, (The Least Detrimental Alternative), New York: The First Free Press, 1996.

In Our Hands: Report of the Binsfeld Children's Commission, July 1996. (Found in COA brief, pg.67)

Legislative Analysis, SB 490, June 17, 1997.

N.Y.U. Rev. of L.& Social Change,177,(187-188),(1974)(Found in COA Brief, page 50)

Listed Citations of Websites:

BFS on the Web. Bureau of Family Services (before the BRS, Bureau of Regulatory Services, approx. changed 1/03),
<http://www.cis.state.mius/brs/cwl

Family and Health Services.
<http://www.michigan.gov/cis

F.I.A. Policy and Procedure Manual. 12/03, viewed 12/03,
<http://mfia.state.us/olm.web/ex/html

MCL on the Web. Michigan Compiled Laws. December 2003
<http://www.michiganlegislature.org

MCR on the Web. Michigan Court Rules.1-21-03, viewed I0/03-12/03.
<http://www.courtofappeals.mijud.net/rule

MRE on the Web. Michigan Rules of Evidence 1-21-03, viewed 10/03-12/03.
<http://www.courtofappeals.mijud.net/rule

In The

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For the case from **State Courts:**

The opinion of the highest state court to review thee merits appears at Appendix A to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X]is unpublished.

The opinion of the Michigan Oakland County Circuit Court appears at Appendix B to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

[X] For the case from the **state courts:**

The date on which the highest state court decided my case was February 27, 2004. A copy of that decision appears at Appendix A.

[X] A timely petition for rehearing was thereafter denied on the following date: April 23, 2004, and a copy of the order denying rehearing appears at Appendix D.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on _____(date) in Application No. ___A_____.

The Jurisdiction of this Court is invoked under 28 U.S.C. sec.1257 (a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clauses of the Fifth and the Fourteenth Amendment, the Doctrine of Truth, the Doctrine of Completeness, the Doctrine of Four Corners.

"The reviewing court on **the entire evidence** is left with the definite and firm conviction that a mistake has been made". In re Miller, 433 Mich 331,337; 445 NW2d 161 (1989).

The simple definition, regarding "Arbitrary and Capriciousness", as used in In Re Cotton, 208 Mich App 180; 526 NW2d 601 (1994). Which states, "it is in the '*absence of any good reason*' to withhold consent that the decision maker can be seen as arbitrary and capricious".

The Court of Appeals should have exercised its powers over the Lower Courts, because the Petitioners weren't given an "ADEQUATE LEGAL REMEDY" that would be covered by the Definition, OR the sense of fairness and justice in the Judicial processes. The LAW provides for (any person) to not be "DEPRIVED OF LIFE, LIBERTY, OR PROPERTY, without the Due Process of Law". The meaning expands with jurisprudential attitudes of fundamental fairness etc...; 302 U.S.319, 237 U.S.309, 397 U.S. 254, 262-263

"Due process is not a mechanical instrument. It is not a yard stick... It is a delicate process of adjustment inescapably involving the exercise of judgment by those whom the Constitution entrusted with the unfolding of the process." 341 U.S.123, 162-163. Justice Frankfurter.

STATEMENT OF THE CASE

Petitioners have been licensed Foster Parents for ten years+ and remained so during BRS reviews and new renewals. The Petitioners' have adopted four children, but have been denied the consent for the adoption of two foster babies placed at birth in their home. The two are not related, however, the parents of both were incarcerated long term. Sebastian Couturier was 6 wks premature and placed in November of 2000, while Antoinetta Hernandez was 10 wks premature and placed in March of 2001. Catholic Social Services of Wayne County is the responsible agency. The Agency was to "provide support" in crisis situations to the foster family as written in their contractual agreement with all foster families. This was not the case though as things began to happen, in May of 2001, parental rights were terminated for Sebastian and the petitioner's started the adoption process through the Agency. Antoinetta's parental rights were terminated in Wayne County, on September 14, 2001, the same day she and Sebastian were illegally removed by the Agency. She was made a State Ward, under MCI (Michigan Children's Institute). After, two CPS (Child Protection Services) reports were unsubstantiated and the first of three FCRB hearing found favorable to the Petitioners recommending the return of both babies in their best interests, Mr. William Johnson, the MCI Superintendent, returned just one, Sebastian, to the petitioners' home. Egregiously, the one returned, he didn't have legal jurisdiction over. Sebastian, a former Wayne county ward was made a ward of Kent County Court system, however from his hospital release at birth, he remained in the petitioners' care, while unknowing to the adopting petitioner's, hearings were being held there in Kent County. Sebastian remained in the care of the Petitioners', all totaled 16+ months, even after another favorable FCRB hearing was held in Kent County, up until the time Judge Nanaruth Carpenter withheld consent and removed him without proper notice in March 2002. Judge Carpenter, after the trial court hearing ruled in November 2002, ordered the adoption of Sebastian Couturier "within the 21 days" allowed for the appeal time. Superintendent Johnson had withheld his

consent for the adoption of Antoinetta without reason prior to that, when he made his jurisdictional mistake, he refused to discuss any specifics concerning Antoinetta even though she had no adoption placement, it was not until August 2002 that the petitioners were given his miniscule and erroneous concerns in a brief letter, however, he had conversations with the petitioners concerning Sebastian, whom he'd originally thought he had jurisdiction. Petitioners, filed for adoption in both counties, several different times due to the mistaken jurisdiction, different counties (though residing in Oakland County). Subsequently, petitioners filed motions requesting a hearing under MCL 710.45, based on their inability to obtain consent. In this hearing, the decision makers' were "the only permitted witnesses" to testify, (neither subpoenaed witnesses nor the petitioner's themselves were allowed to testify) evidence was limited, and a jury of their peers denied. The Trial Court concluded the evidence was insufficient to meet the high Standard of Clear and Convincing Evidence, subsequently, the decision makers didn't act in an arbitrarily and capricious manner by withholding their consent. The adoption petitions were dismissed. Petitioners appealed by right to the Court of Appeals were the panels' ruling found the trial courts opinion to be affirmed. Petitioners' are now requesting a reversal of these opinions and orders on the grounds of an egregiously palpable error, whereas, "The reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made" (In re Miller, 433 Mich 331,337; 445 NW2d 161 (1989).

REASONS FOR GRANTING THE PETITION

This egregious matter is highlighted by numerous errors of Law and fact, acting in Pro Se, the petitioners admit they don't clearly understand all of the legalese, but have an overall simple understanding to the basis of their Constitutional rights to due process in both procedural and substantive, in the Due Process Clauses of the Fifth and the Fourteenth Amendment, the doctrine of truth, the doctrine of completeness, the doctrine of four corners, and finally, the simple definition, regarding "Arbitrary and Capriciousness",

as used in *In Re Cotton*, 208 Mich App 180; 526 NW2d 601 (1994). This controversy has hinged on the palpable error of;

Whether one should be allowed to confuse, intentional or not, the major differences between the use of the word "correctness" of the decision to deny or consent to an adoption, in terms of the positive or negative; i.e....choosing "one set of parents" vs. "another set of parents", or rather, with the other defining use of the word "correctness", of information defined as the "use of lies/misinforming" vs." the truth" as the very platform that is the very corner stone for the basis of the decision made.

One of the main points in the opinion of the COA is, "that the scope of a sec.45 (MCL 710.45) hearing doesn't involve the "correctness" of information contained in the reports on which the representative relies in making his/her decision". If one does not utilize the truth in these matters, then what is justice? If the reports or opinions given to a decision maker are false, shouldn't they be thrown out or at least marked and viewed appropriately. Taking this one step further, if the documents utilized contra-indicate the decision or verdict, shouldn't one suspect bias, foul play, or a tainting. Our court system should never make the statement, "we are not looking for the **accuracy** of the information or **the truth** of it even, what, was this a report that was used as a basis to make a decision..."(Tr. Sept.13, 2002, pg 24, 21-25, Judge Linda Hallmark).

What does justice truly represent if one or more allegation(s) (Lies), that has been proven to be false by admitted evidence, report after report, can strip you of your basic inalienable rights; life, liberty, and your pursuit happiness, inclusive of all your loved children... The Stanley's have been black-balled in their care of foster children despite the fact that they have continuously been given their license renewal from the BRS (Bureau of Regulatory Services in Michigan) since this incident, illegally removing the "adoptable foster children" (without any provisions or restrictions). They were found to be innocent of all of these allegations (26 in all).

Again, it's not the written exhibits that have showed "good reason" for consent or denial, but rather, it is the omission of

the "verbal" truth in or of "backroom" conversations when spoken concerning only specifically viewed documents and subjectively "opinionated" information exchanged between a few chosen social workers, which was acted upon, thus separating it from the defined "correctness" of the decision. This caused the palpable error of the law, a misleading of the court, besides ultimately showing the decision makers as arbitrary and capricious in their actions. What could possibly have been spoken or written to the decision makers that would cause them to ignore all logic and reasoning, given the presented written evidence? If anyone accused of neglect, abuse, etc... until testimony is heard, is never given the questionable "real" reasons for the allegations how can one address them in any manner?

Also, how could the petitioners' present proofs, not being allowed to be admitted to the trial court, if one cannot verify or refer to their very existence in the realm of the court? In one example, only the specifically specified documents utilized by the decision makers at the exact point time of their determinations were allowed as admissible in the courts records at the lower court trial.

However, even when one reads the limited presented evidence and sees the actions of the decision makers, one has to know someone interjected libelous and/or slanderous information that's being utilized and has been egregiously misleading.

For example, the children were removed from their only known home, and when the written religious statement was made by Mr. and Mrs. Stanley at their Foster Review Board Hearing, in regards to their belief that the babies were their "Restoration", their "Miracle", this statement was then used as the latest allegation by the social workers to stop the two babies from being returned, in spite of the positive vote and recommendations of it being the best interests to return the children at this hearing by the board. It is a widely used religious term, even utilized by the legal system, RESTORATION.

Consequently, upsetting numerous people, including the two decision makers', Judge Carpenter finally mentioned this issue in her testimony as a reason that concerned her and Mr.

Johnson also. They quickly moved to associate this with the malady of "transference" issues regarding the babies, even implying in their courtroom testimony this was the new "real reason" for a psychological vs. the "real original allegations" of "Munchausen by Proxy" and "Medical Neglect" (Diametrically opposing allegations, resulting in CPS Reports within 30 days of each other, one regarding each of the two babies, both unsubstantiated).

This would also, beyond religious discrimination, be a discrimination of the Stanley's rights to the freedom of speech. It is not wrong to believe that the babies were miracles. It was not coincidental that the two babies due birth dates were the same as two babies the Stanley's lost due to two miscarriages in 1994 (which was known to the social workers at CSS of Oakland County). Their letter to the FCRB stated these specific details as one of several reasons the babies should be returned to their home and that were expounded upon by the decision makers' in their respective testimony. Yet, that document was not placed in the record.

Furthermore, in the only letter sent to a prospective psychological professional, Dr. Willett; the petitioners did bring up that this document was excluded; in fact this discrepancy was in the Appellate brief, palpable evidence of possible ex parte and distorted facts contained in this document, written by the Agency, suspiciously not on the Agency's standard letter head, none the less, upon inspection by one not knowing the case, it clearly was written to give the appearance of being written by Dr. Willett personally. She refused to get involved after receipt thereof from the Agency, citing it was an unreasonable, too extreme in nature, and requiring more than one professional's findings. Another cited if the agency would not release the file to him, it was already tainted and would be fruitless to pursue.

In addition to the above the petitioners' questioned and wanted to know why it was on the lists of docket entries in their brief to the Michigan Court of Appeals, when it was not noted by their attorney or them in the trial as a presented or even acceptable exhibit. Furthermore, its egregious contents again brought the religious issues regarding "restoration", which the agency social workers' in turn, though not

professionally qualified to do so, made the connection and secular termed reference of "transference issues" which was brought up in the FCRB, and that, the agencies social workers inferred were then new maladies in question.

After some consideration, as spoken verbatim by the COA panel, "a fly in the ointment" (Judge Shuett) or "tainted" (Judge Griffin) action(s) must have occurred. This was putting it lightly, there was numerous inferences during the time that Mr. and Mrs. Stanley fostered the children and started the adoption processes that their religious affiliation as Pentecostal believers was questioned, and unnecessary remarks were made such as; "Since the three girls last names are "Pentecostal" they have to come to your home to stay for now", "Mrs. Stanley uses tarot cards to tell the future. It is how she learns things about others", and "Where is your God now?", when the social worker had previously removed a female child (6 mos).

One of the next main arguments is the evidence being presented must be clear and convincing, in this case the petitioners had 42 exhibits that all were either very favorable "when read in there entirety" or "refuted as not being seen", therefore not used, (by the interpretation and limiting of the court), scrutinized, or even questioned, by the decision makers own admission in testimony, again showing them to be arbitrary in their conclusions of the total content of the exhibits, usually by omitting the next sentence (splicing the truth); ie… house clean, but cluttered…too many pictures of the children on the walls; too many cats, but breeding dogs…too many adult caregivers, so the babies will not know who the real father figure is, etc…

One document mentioned was the letter written directly by the petitioners for the foster care review board hearing, this letter was mentioned in the trial by Judge Carpenter as one of her reasons for denial, yet it was not entered in as an exhibit (see exhibits list). This document showed the reference to Restoration and the inner feelings of the Petitioners'. Also, this document alone refutes the written statements made again, by Judge Carpenter's appointed FIA worker, Nancy Schroder, that Mrs. Stanley, the petitioner,

"presents some very worrisome behaviors..., her statements lead to unending 'streams of consciousness', It appears difficult for her to contain herself...". Not one FCRB member questioned Mrs. Stanley's communicating abilities, nor, any other "outside" of the FIA/Agency professional.

Furthermore, not one Licensed Medical Professional, (Out of 10) that the Stanley's came into direct contact with, stated any maladies of her inability to communicate properly, being dysfunctional, Munchausen-by-proxy or Medical Neglect, but rather the opposite; nurturing parents. Note; anyone after reviewing the entire exhibits allowed has to know the stated allegations are frivolous, fanciful and without factual support (see exhibit from Agency C.S.S.W.C. to Dr. Willett).

In contrast, the Respondents, had only two letters, written by the same professional, entered as the proofs that they used to base their decision for denial. These two letters, their purpose, was taken out of context with the occurrences. Furthermore, never given before the trial to the petitioners, nor their attorney. In one permissible witnesses testimony, which was not allowed by the court, one could have pointed out the discrepancies, Dr. Perla, who'd wrote them, had blatantly contradicted her written position, by not advising two months previously, the same immunizations for the other premature baby, Sebastian, who met the same criteria and at the next RVS season received shots by the appointed physician, no letter was presented for him. (This too would've been hearsay, unless the petitioners were allowed to testify about the document),

The petitioners were not given any opportunity to testify that the Child Protection Service Reports found the allegation of Medical Neglect concerning the RSV shots unsubstantiated and not just cause for an emergency removal, much less at all. Also, it would have been very important for the petitioners' to have ever received a copy of this instructive letter after the doctors' received Medicaid approval, it was sent to the agency's social worker, not the petitioners. They were never notified by the Doctor. However, it didn't seem to be of importance to the court, no matter what. The petitioners' Attorney, Sharon Noll-Smith, pointed this out in her noted, "*Standing Objection*"

concerning her clients rights to be heard by their own testimony, witnesses, and potential cross-examination.

Furthermore, The Motion in Limine, that limited the first part of the trial to only the testimony of the two decision makers just furthered the selectivity and subjectivity. One should have their time, their due process, their day in court (ALL Subpoenas were ignored for numerous medical professionals and social workers, including the primary social worker herself. It was all dismissed as unimportant for a witness to testify). How can one express the "details" that point out the "arbitrary and capriciousness" of a matter, if not allowed to testify to the egregious and sordid facts behind the entire ordeal, especially when it is sadly "unfolding" in testimony during the trial.

Despite these biases, the petitioners presented clear and convincing hands-on evidence far outweighing the false allegations. The evidence apparently was convincing to anyone taking the time to read it through out. Something was amiss. Beyond a shadow of a doubt, there's an obvious and palpable error when allegations can destroy a citizens' life without an inquiry!

Another point summarizes that the Court's panel of Honorable Judges, "are of the opinion that a decision maker is not required to delay a decision for an adoption until a long-requested report is produced". Clearly, this can't be the way it is being interpreted. It'd be misleading for one to circumvent the Michigan Supreme Court Ruling in May 2003, In re JK, May 20, 2003, unpublished, (appendix B), that specifically states no Final Orders of Adoption shall occur while it is pending in the courts, no matter how long the process takes to complete. It is a palpable, erroneous and biased conclusion of the facts in this case, not to mention being arbitrary and capricious.

In addition to the above in the opinion of the Court of Appeals they imply it was the Stanley's or their counsels' choice for there reason for "not testifying in the hearing", this is a wildly erroneous inference and should not be acceptable any means in any court. Clearly in other cases as cited in the briefs, many sec. 45 cases have a significant amount of witnesses testifying... The petitioners' attorney had

numerous subpoenaed people involved in their case who could by their testimony support or refute the "good reasons" and the things that were tangibly written or stated during the care of the children and the trial. Thus, it could have made the standard "the ***absence*** of any good reason" to withhold consent that the decision maker can be seen as arbitrary and capriciousness" null or void by showing the "truth of the matter". For instance, at one point it was stated by Judge Carpenter, that Mrs. Stanley was unable to communicate, this very document, in and of itself proves Mrs. Stanley's cognitive and communicative abilities.

In addition to the above, the Court of Appeals Opinion and Order implies that there are other questions that could have been presented by the petitioners', that could or should be addressed by the court, but because the petitioner's did not "specifically" put them in their brief, they would not be addressed by the court. These "Unknown Issues" of fact and law that were obviously seen and determined by the Court of Appeals should be addressed due to the case being done by the petitioners' in "pro per", much less, it is the right thing to do in the heart of the matter, for the sake of "Justice" and their first amendment rights. It is the courts reasonable service to do the ethical and morally correct thing.

Also, Judge Carpenter didn't wait long for reports, or the twenty-one days, as noted before. The report in contention, had its' criteria changed numerous times from the first hearing in Kent County on Nov 25, 2001 (see exhibits, Court Review Log; 1/14/02, Transcript Kent County Hearing) till the psychological report was completed by Dr. Briedenbaugh, (See Exhibit List). **Judge Carpenter barely waited 60 days total for the petitioners' to see the Doctor; However, she did invoke numerous statements about Kent County having "braver therapists" and the petitioners could get "fifty" psychologicals, but that didn't mean she'd use them.** Judge Carpenter cancelled Sebastian Couturiers' April 10th hearing, because she had removed him on March 27th, without proper notice again, especially to the Stanley's as interested parties.

Listed are a few of the statutes not followed; some time sensitive; all of this information was accessible to the

decision makers and because of their blatant disregard, it shows clear evidence arbitrary and capriciousness in their withholding of consent to adopt.

1) Judge Carpenter ordered a final adoption within the 21 days, an arbitrary action, that an appeal is allowed, MCR 7.215(F)
2) The law states that preference is given to caregivers who have an adoptable child for over 12 months in their care, and should be considered even at 6 months.
3) Neither diametrically opposing allegations for the babies illegal removal was substantiated, Child Protection Service reports were found unsubstantiated (Munchausen-by-Proxy and Medical Neglect 9/01); 3-FCRB hearings were favorable to the Stanley's and recommended the return of the children; 2 Assessments and 1 Psych Eval showed no deviations etc… Furthermore, proper legal notice was not given by the agency for any of the time constraints in regards to both foster children's removal.(See exhibits FCRB 2/5/02, and FCRB 9/27/01)
4) Petitioners as interested parties, were never informed of hearings regarding both babies cases, much less the hearings that were held in Kent County. We found out by accident, and drove to Kent, ASAP!
5) Both of the Babies' LGAL never visited the children in their home. Sadly, the LGAL in Kent County, Paula Hines, wouldn't have known of the issues, save 3 calls, by the petitioner. The child, by then, had been removed, the petitioners had retained an attorney, she then basically refused to talk to the petitioners.
6) A so-called special investigation report done by the Agency, which is to be done within 45 days, took over 6 months and was 29 pages long. The allegations grew to a count of 26, before it was all over. The BRS still found the petitioners blameless, issuing no corrective action plan(s) and renewing their license. It was completed in the same month, a few days from the psych eval that Judge Carpenter was awaiting, but she still did not accept this, her biased opinion concerning Kent County showed, it wasn't done with a Kent County Professional, even

though this was the 3rd evaluation by a state licensed professional for the petitioners.

7) Our file, requested to be sent to 3 separate professionals' offices for their use, was never sent by the Agency, or ordered to be sent by Judge Carpenter. (How can one get a report done if no one is willing to cooperate on the other side? Then, petitioners are accused of acting unilaterally and uncooperative with the agency). The Agency took over 18 months to send a copy of the foster care file, furthermore, it was suspiciously 1000 pages short of FOIA statement, numbering 1763 pages, Nov 2001-Apr 2003. Laws state they must give a copy of the file to the Foster Family. They were the uncooperative ones.
8) None of the Agency workers would communicate with petitioners in a civil manner, much less the one Judge Nanaruth Carpenter appointed on January 12, 2002 to "help" with the specifics of the process to get this "long-requested" report. She, Nancy Schroder of the FIA, openly admitted when questioned, of being uncooperative with the foster/ adoptive parents at the Kent Foster Care Review Board Panel on Feb 5, 2002, (See Exhibits FCRB Report, Note footnotes).

The truth is needed in order to make a "just" decision concerning any case, especially an adoption, to use a false allegation and or malicious misinformation is totally against the doctrine of truth, it is a palpable error and shows obvious biasness. Subsequently, any decision based on false premises, in other words lies, is totally opposing and misleading to the Adoption Codes purpose for "the best interest of the child" or any judicial case for that matter. Again, 99% of the verbal reasons (allegation), presented by the decision makers was unsubstantiated by exhibits, and the remaining 1% used as "good reason" could have been simply explained away, if the petitioners' or witnesses would have been able to testify to the facts, subsequently, not one "good" reason existed justifying the denial of the adoptions. It is in the absence of any "good reason" that the decision makers can be determined to have acted in an arbitrary and

capricious manner, and adoption proceeding can continue, In re Cotton, 208 Mich App 180; 526 NW2d 601 (1994).

The Stanley's have done every request presented, when others did not follow through with the rules of professional responsibility, in connection with their respective jobs, the evidence they provided clearly and convincingly shows the Stanley's position and sheer determination to find an answer to appease these people.

There hasn't been a single piece of evidence presented, when read under the rules of completeness, discrediting the parenting abilities of the Stanley's. However, since they were denied by the court the right to testify and call witnesses to prove their innocence of these egregious verbal allegations, it is by their own six boys, that they are exonerated, because it is the boys, both biological and adopted, who are living testimonies of their parenting success. The Stanley's are in the best interest of the children, because Arbitrary and Capricious actions have occurred throughout this entire ordeal.

In addition to the above, a Judge in the court system should never utter the appalling statement, "we are not looking for the accuracy of the information or the truth of it even, what, was this a report that was used as a basis to make a decision..."(Tr. Sept.13, 2002, pg 24, 21-25).

The petitioners' right to Due process has been skirted; their right to the truth being brought out in a court of law, not false statements or allegations; their right to testify, they knew pieces of the puzzle that needed to be revealed by their testimony; their right to have witnesses speak of what had in actuality happened; their right to know specifically what they were accused of; and their constitutional right to the freedoms of their religious beliefs and speech.

The actions that have occurred in the lower courts have not been "in the best interests of the children", nor anyone else for the matter. If this can occur to good common people who have support and resources to help them through such an atrocity, where does that leave the less fortunate? The "undesirables and poverty stricken" as one professional stated. This case is just one, in a growing problem that is reaching epidemic proportion. Anyone questioning this

should spend a few days on a Court Watch in the Family Courts and just a few hours on the internet in the websites concerning the CPS, FIA, DSS, or any other foster care/ parents or children's rights/advocacy related chat rooms and petitioning non-profit organizations.

It is apparent that too many people believe that they are above the ethical codes and standards we have in our federal and state laws. If we continue to allow slander and libelous statements to stand as truths, and then legally respond to the accused, "as guilty before proven innocent", we could all end up with our children being permanently removed from safe and secure homes and their loving and nurturing families. This is not something to be taken lightly. It is happening more and more, and sadly, for less and less abuse and or neglect etc...

The Petitioner's did absolutely nothing to warrant such a cruel and unusual punishment. The loss of a child, much less two, and not to mention the constant fear of any future reprisal from one false allegation, which could potentially result in the removal of any remaining children, is just totally unacceptable. (Logically, if the Stanley's were such a danger, why would they ever leave the other four teenaged children? And why would the State of Michigan renew the Stanley's foster care license for three more consecutive years without any provisional or disciplinary actions after their reviews and findings?)

Our society should want better for its own citizens. By ignoring these blatantly malicious incidents, the cry of the people, and the documented pain of the children, the Judicial System, as well as others under governmental immunity, are indirectly, but literally destroying our most precious natural resource, our children, the next generation. These children, not to mention the parents, never fully recover from such traumatizing events. Sadly, statistics have shown this over and over again, and the Stanley's have seen it happen to 33+ foster children over the last ten years as *awarded* licensed foster parents, (not criminally accused biological parents).

In closing, an allegation, rather blatant Lie(s), should never ever even be considered acceptable, interchangeable, or

justified by our legal system with the honest and needed truths that are just one witnesses' testimony away!

No Judge should take away ones rights to testify to the facts that occurred in their case. *No Judge* should refuse the petitioners' the right to have witnesses speak in their behalf. *"No Judge"* should ever make the statement, ***"we are not looking for the accuracy of the information or the truth of it even, what, was this a report that was used as a basis to make a decision..." (Tr. Sept.13, 2002, pg 24, 21-25, Judge Linda Hallmark)***. So a false report is legitimate? One's story should always be heard in our courts, they should be allowed to tell of the circumstances, the reasons, and provide any other pertinent information that would prove their innocence and bring out the truth of a matter. When one bitter *unlicensed* social worker can say, "I can't be touched", in regards to her malicious and destructive actions, we are no longer living under the rights and freedoms expressed in the original constitution. Where is justice, liberty, and the pursuit of happiness? Is it a lie too?

Finally, the Petitioners jumped through every hoop that was placed before them by the system in an open and forthright attempt to have the babies returned to their home. It is obvious now, *that this is legalized kidnapping*. The Laws are there to stop this, however, it is the courts that are interpreting these same laws with their judicial powers, thus making these laws to be of none effect in many, if not all of these cases. There isn't a high standard to be met in this cases matters of fact, a standard is attainable, it is set within reason, the "high standard" stated by the Judge seems to have never been obtained by any petitioner to set a precedence. This appeal allowed under the MCL 710.45 is all a farce, lip service, or basically futile. The decisionmakers did act in an arbitrary and capricious manner all the way through this ordeal. The simple fact was that not one person allowed the petitioners' to answer the "mostly unknown" or "shifting" allegations. This alone should show arbitrary and capriciousness. *The "truth", is the very foundation for the factual support criteria utilized in their decision making for consent or denial*. Instead the professed investigations and directives took on lives of their own so nothing could be done

in an open or timely manner. Of course, blame would then be pointed toward the petitioners. It would seem the decision was already made before the MCL 710,45 hearing. Judge Carpenter proved this in her adoption of Sebastian before the legal 21 days for appeal.

> **"Individuals aren't immune for the results of their official conduct simply because they were enforcing policies or orders. Where a statute authorizes official conduct, which is patently violation of fundamental constitutional principles, an officer who enforces that statute is not entitled to qualified immunity. *Grossman v City of Portland*, [9thCir. (1994)]."**

In addition to the above, the petitioners' are not dysfunctional, incompetent, or living in a chaotic environment. They have cared for and adopted four special needs children (33+ total), some in college now. The decisionmakers' ignored this fact. Ironically and for the legal record, the two babies now in question, were never by the agency or the State of Michigan given the status or care level of being "special needs" children while in foster care. So, yet another blatant "lie", or, politically correct piece of stated "misinformation" just to make this decision legitimate or justified in their eyes. If this is not a clear error, or subjective bias, what is? I will not accept the excuse of passing-the-buck, each person has had the professional responsibility to address the contradictions they saw in front of them.

It is apparent that if this cancerous "lack of accountability" is not addressed soon, we, as a nation, will be guilty of destroying the backbone of the family. Children should never be stripped from their families or long-term caregivers to be placed in "numerous foster homes", "managed care facilities", or "institutions", they should be parented by their intimate, loving, and close families, it is their right, the children are not pawns or sacks of potatoes to be moved without "just" cause. **Absolute lies have no place in this process and the laws of the land should be enforced to bring about a HIGH standard in this broken system. "if the government becomes a law-breaker, it breeds contempt for the law, It invites every man to become a**

law unto himself. It invites anarchy." *U.S. v Olmstead*, 277 U.S. 438 (1928), Justice Brandeis.

CONCLUSIONS

WHEREFORE, the Appellants Pray as follows, that based on the "Pro se" analysis in these pleadings, the petitioners respectfully requests this Forthright and Honorable Court issue its powers to grant The Petition for a Writ of Certiorari. The petitioners are firm in their belief that many egregious wrongs have been committed and are occurring too many times to too many others in our society, sadly, to those who do not have the resources, stamina, and sheer determination to stay the course. Families are being destroyed and never recover from the legal immunity that is given to those who are in authority. It is with this love and insight that the petitioners respectfully submit this pleading to bring about change. This is a case that is of such imperative public importance as to justify deviation from normal judicial practices. However, we are not asking for immediate determination as we have waited so very long and as foster parents, we have seen the courts remove children time and time again to no avail. We, the petitioners want justice and we want the public, given this personal insight, to again feel safe in their homes with their families, 28 U.S.C. sec. 2101(e).

Frank J Stanley 9-20-04 dated

Patti L. Stanley 9-20-04 dated

Frank and Patti Stanley
Adoptive, Biological, & Foster Parents
5840 Hatchery Rd.
Waterford, Michigan 48329
1-248-884-5212/1-248-673-8463

(APPENDIX A)

State of Michigan

Court of Appeals__

In the Matterof SEBASTIAN AUSTYN-McKENZIE COUTURIER and ANTOINETTA MARIE HERNANDEZ, Minors.

UNPUBLISHED
October 21, 2003

FRANK J. STANLEY and PATTI L. STANLEY,
Petitioners-Appellants,

v.

No. 245206
Oakland Circuit Crt
Family Division
LC NO.
02-661974-AM

JUDGE NANARUTH CARPENTER, MICHIGAN CHILDREN'S INSTITUTE, And CATHOLIC SOCIAL SERVICES OF WAYNE COUNTY,
Respondents-Appellees

Before: Owens,P.J., and Griffin and Schuette, JJ.

PER CURIAM,

Petitioners appeal as of right from the trial court's orders dismissing their petitions to adopt the minor children pursuant to section 45 of the Adoption Code, MCL 710.45. We affirm.

I. Facts

Petitioners are licensed foster care providers. This case involves petitioners' unsuccessful efforts to adopt two children who were placed in their home for foster care. The two children, who are not related, were placed in their home

as a result of separate child protection proceedings that were initiated in Kent County and Wayne County. Sebastian Couturier (Sebastian) was placed in petitioners' home after he was born premature in October 2000. Antoinetta Hernandez (Antoinetta) was placed in petitioners' home after she was born premature in February 2001. Respondent Catholic Social Services of Wayne County (CSSWC) was the agency responsible for the children while they were in foster care.

In May 2001, the parental rights of Sebastian's birth parents were terminated in the Kent Circuit Court. Sebastian remained a court ward. His foster care placement in petitioners' home was continued. In September 2001, the parental rights of Antoinetta's birth parents were terminated in the Wayne Circuit Court. Antoinetta was committed to respondent Michigan Children's Institute (MCI) for adoption planning, supervision, care and placement. At that same time, CSSWC removed Sebastian and Antoinetta from their foster care placement in petitioners' home. However, William Johnson, the MCI superintendent (hereafter "Superintendent Johnson"), while mistakenly believing that he had jurisdiction over both children, later determined that Sebastian should be returned to petitioners' home for foster care placement.

Sebastian remained in petitioners' home until Judge Nanaruth Carpenter withheld consent for petitioners to adopt Sebastian in March 2002. Superintendent Johnson had earlier withheld consent for petitioners to adopt Antoinetta in January 2002.

Petitioners subsequently filed petitions in the Oakland Circuit Court (hereafter "trial court") to adopt the two children, accompanied by motions requesting a hearing under MCL 710.45, based on their inability to obtain consent to the adoptions. Following an evidentiary hearing at which the decisionmakers, Superintendent Johnson and Judge Carpenter, each testified, he trial court found that petitioners' failed to establish by clear and convincing evidence that the decisionmakers arbitrarily or capriciously withheld consent. Accordingly, the adoption petitions were dismissed. Petitioners now appeal.

II.Analysis

Having considered petitioners' arguments on appeal, we find no basis for disturbing the trial court's decision. We have limited our review to the claims raised in petitioners' statement of the questions involved. MCR 7.212(C)(5); *Meagher v McNeely & Lincoln, Inc,* 212 Mich App 154, 156; 536 NW2d 851 (1995).

We first address petitioners' claim that the trial court committed legal error by not admitting testimony other than that of Superintendent Johnson and Judge Carpenter. In general, a trial court's evidentiary rulings are reviewed on appeal for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488' 596 NW2d 607 (1999); *In re Caldwell*, 228 Mich App 116, 123; 576 NW2d 724 (1998). Preliminary questions of law affecting the admission of evidence are reviewed de novo. *Lukity, supra* at 488.

Upon de novo review, we conclude that petitioners have not shown that the trial court committed an error of law. The trial court did not preclude witnesses other than the decisionmakers, but only ruled that the testimony would be limited to the decision-making process and that the proofs would begin with the decisionmakers' testimony. Pursuant to MCL 710.45, the initial decision that the trial court was required to make was whether petitioners established by clear and convincing evidence that the decision to withhold consent was arbitrary and capricious. In re Cotton, 208 Mich App 180, 184' 526 NW2d 601 (1994), The trial court was not permitted to decide the adoption issue de novo, Id. Hence, the trial court did not err by limiting the scope of the hearing to evidence relevant to the decisionmakers' reasons for withholding consent.

Further, given that the petitioners have not identified any specific evidence relevant to the decision-making process that they believe should have been admitted, but was excluded by the trial court, we find no basis for relief stemming from the trial court's evidentiary rulings. Petitioners' assertion that they were denied a due process opportunity to be heard affords no basis for relief.

Petitioners' cite no authority for the proposition hat due process requires a trail court to hear irrelevant evidence. See *Master Craft Engineering, Inc v Dep't of Treasury*, 141 Mich App 56, 73' 366 NW2d 235 (1985).

Next, we consider petitioners' claim that the trial court committed legal error with regard to the notion of "correctness" at the hearing on their motions under MCL 710.45. Examining this claim in the context of the specific evidentiary ruling cited by petitioners as factual support for their claim of error, *People v Norman*, 184 Mich App 255, 260' 457 NW2d 136 (1990), we conclude that petitioners have not demonstrated an error of law affecting the trial court's evidentiary ruling to disallow irrelevant questioning offered by petitioner to refute the accuracy of information in reports considered by Judge Carpenter. *Lukity, supra.* The trial court properly recognized that the scope of the hearing did not involve the correctness of information in the reports on which Judge Carpenter relied when deciding whether to withhold consent to adopt Sebastian was made in an arbitrary and capricious fashion. *In re Cotton, supra.*

Next, we consider petitioners' claim that the trial court erred in denying their motions and dismissing their adoption petitions under MCL 710.45. With regard to the motions, the trial court's scope of review of the decisionmakers' actions was, as indicated previously, limited to whether there was clear and convincing evidence that the decisions to withhold consent were arbitrary and capricious. MCL 710.45(5)' In re Cotton, supra. The clear and convincing evidence standard is the most demanding evidentiary standard in a civil case. In re Martin, 450 Mich 204, 227' 538 NW2d 399 (1995). Evidence is clear and convincing if it "produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable [the fact finder] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *Id* at 227, quoting *In re Jobes*, 108 NJ 394, 407-408; 529 A2d 435 (1987).

On appeal, an appellate court generally reviews a trial court's factual findings for clear error. See MCR 2.613(C); cf. *Buchanan v Flint City Council*, 231 Mich App 536' 547' 586 NW2d 573 (1998). "Generally speaking, factual findings are clearly erroneous if there is no evidence to support them or there is evidence to support them but this Court is left with a definite and firm conviction that a mistake has been made" *Zine v Chrysler Corp*, 236 Mich App 261, 270; 600 NW2d 384 (1999). An appellate court generally review questions of law determined by a trial court de novo. *Cardinal Mooney High School v Michigan High School Athletic Ass'n*, 437 Mich 75, 80; 467 NW2d 21 (1991). The trial court's application of the law to facts is also reviewed de novo. *Centennial Healthcare Mgmt Corp v Dep't of Consumer & Industrial Svcs*, 254 Mich App 275, 285; 657 NW2d 746 (2002).[1]

In the case at bar, we are not persuaded that the trial court clearly erred in finding that petitioners did not meet their burden of proof under MCL 710.45. We reject petitioners' challenge to the credibility of the decisionmaker's testimony. It is apparent from the record that the trial court found both decisionmakers to be credible witnesses. A reviewing court gives deference to the trial court's special opportunity to judge the credibility of the witnesses who appear before it. MCR 2.613(C); see also In re Miller, 433 Mich 331, 337; 445 NW2d 161 (1989).

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1 Although the parties on appeal, with the exception of Judge Carpenter, rely on the standard of appellate review for administrative actions falling within Const 1963, art 6, sec. 28, discussed in *Boyd v Civil Service Comm'n*, 220 Mich App 226; 559 NW2d 342 (1996), we note that the parties have not established that Const 1963, art 6, sec. 28, is relevant to a motion under MCL 710.45. In any event, as noted in *Boyd, supra*, the clearly erroneous standard of appellate review has been widely adopted in Michigan Jurisdiction. We have applied the clearly erroneous standard, as it applies to the fact finding of the trial court rendered for purposes of deciding petitioners' motion.

Giving the appropriate deference to the trial court's findings, the essential question before us is whether the decisionmakers' testimony about the process that they followed in gathering information and their reasoning, examined in the contest of the information that they considered shows that the decisionmakers arbitraril/ and capriciously withheld consent. In each case, we note that the evidence reflected that the decisionmaker id not hold a formal hearing, but gave petitioners an opportunity to provide information or their consideration. Each decisionmaker also had either phone or personal contact with petitioners, although no formal interview was conducted. Both decisionmakers received positive and negative information about petitioners before withholding consent for the adoptions.

Superintendent Johnson's decision to withhold consent for petitioners to adopt Antoinetta was made approximately four months after Antoinetta was removed from her foster care placement in petitioners' home. Superintendent Johnson's concerns about petitioners' failure to cooperate with CSSWC,, Antoinetta's medical care, and petitioners' ability to provide for both Antoinetta's and Sebastian's medical and developmental needs provided good reason for withholding consent. In re Cotton, supra at 185. We agree with the trial court that Superintendent Johnson's reliance on reports and recommendations of the CSSWC, the agency responsible or protecting Antoinetta's best interests, was not unfounded. The trial court did not clearly err in finding that petitioners did not establish clear and convincing evidence that Superintendent Johnson aced arbitrarily and capriciously in withholding consent. Superintendent Johnson's decision was neither unreasoned nor whimsical. *Bundo v Walled Lake*, 395 Mich 679, 703 n 17; 238 NW2d 154 (1976).

Judge Carpenter's decision to withhold consent for petitioners to adopt Sebastian was made at a time when Sebastian was placed in petitioners' home for foster care. However, the CSSWC was supervising Sebastian's medical care. Like Superintendent Johnson, Judge Carpenter's

concerns about petitioners' ability to provide for Sebastian's medical needs provided good reason for withholding consent. Judge Carpenter's additional concerns about petitioners' reasons for wanting to adopt Sebastian and whether their home environment would meet Sebastian's long-term needs also provided good reasons for withholding consent. Moreover, petitioner had notice of the type of psychological evaluation that Judge Carpenter would have found helpful in addressing the concerns of herself and the service providers, but failed to provide it. Judge Carpenter was not required to delay a decision on whether to consent to the adoption until a satisfactory psychological evaluation was produced. We agree with the trial court that Judge Carpenter's reliance on the CSSWC reports and recommendation of the guardian et litem for Sebastian was appropriate. Although Judge Carpenter had both positive and negative information concerning petitioners, the trial court did not clearly err in finding that petitioners did not establish by clear and convincing evidence that Judge Carpenter arbitrarily and capriciously withheld consent. *Bundo, supra* at 703 n 17; *In re Cotton, supra.*

Finally, because the adoption petitions were not relevant unless the trial court found grounds for granting petitioners' motions challenging the decisionmakers' withholding of consent, we reject petitioners' claim that the trial court erred by not going beyond the testimony and evidence for purposes of considering the children's best interests. MCL 710.45(5) and (6). The trial court was not permitted to decide the adoption issue de novo when ruling on petitioners' motions. *In re Cotton, supra* at 184.

Affirmed.

/s/Donald S. Owens
/s/Richard Allen Griffin
/s/Bill Schuette

(APPENDIX B)

STATE OF MICHIGAN
CIRCUIT COURT FOR THE COUNTY OF OAKLAND
FAMILY DIVISION

In the Matter of ANTOINETTA MARIE HERNANDEZ,
Case No: 02-661974-AM
Hon. LINDA S.
HALLMARK
_____/

OPINION AND ORDER

At a session of said Court, held in the City of Pontiac, County of Oakland, State of Michigan, on

NOV 08 2002
HON. LINDA S. HALLMARK
JUDGE

Petitioners/Counsel: **Frank and Patti Stanley – Represented by Sharon Noll Smith**

Respondents/Counsel: **William Johnson, Superintendent Michigan Children's Institute - Represented by Attorney General Morris J. Klau**

Catholic Social Services of Wayne County (CSSWC) - represented by Karen Piper

Judge Nanaruth Carpenter – represented by Judy Bregman

Guardian Ad Litem: **Abbie Shuman**

Minor Child: **Antoinetta Marie Hernandez (DOB 2-6-01)**

Hearing Dates: **September 12 and 13, 2002, September 23, 2002, October 17, 2002**

Issue: **Hearing pursuant to MCL 710.45**
Witnesses: **William Johnson and Judge Nanaruth Carpenter**

This matter is before the court on Petitioners' Motion for Review of the Michigan Children's Institute decision to withhold consent to adoption of Antoinetta Hernandez (DOB 2-6-2001). The court finds that Petitioners have not established by clear and convincing evidence that the decision of MCI Superintendent, William Johnson, to withhold consent was arbitrary or capricious.

The Motion of the Petitioners under MCL 710.45 is **DENIED** and the Petition to Adopt Antoinetta Marie Hernandez is **DISMISSED**.

BACKGROUND

Antoinetta Marie Hernandez was born three months premature on February 6, 2001. At the time of her birth she was addicted to crack cocaine. Upon her release from the hospital, Catholic Social Services of Wayne County (CSSWC), placed her in the foster home of Oakland County residents Frank and Patti Stanley (Stanleys). The parental rights of Antoinetta's birth parents were terminated on September 14, 2001 and she was committed to Michigan Children's Institute. That same day CSSWC removed Antoinetta from the Stanley home and placed her in another foster home. She was subsequently moved to a pre-adoptive foster home on September 16, 2001. The Stanleys appealed the CSSWC's decision to remove Antoinetta from their home. A hearing was held before the Wayne County Foster Care Review Board on September 19, 2001. The Review board found that Antoinetta's removal from the Stanley home was not in her best interests. William Johnson, superintendent of the Michigan Children's Institute (MCI), reviewed Antoinetta's removal and the Review Board's

findings and decided not to return Antoinetta to the Stanley home.

Catholic Social Services of Wayne County issued a Preliminary Adoptive Family Assessment November 12, 2001. They Recommended that the Stanleys not be approved to adopt Antoinetta. On January 16, 2002, William Johnson denied the Stanleys request to consent to their adoption of Antoinetta. The Stanleys filed a petition to adopt Antoinetta and Motion for hearing under MCL 710.45 in Oakland County Circuit Court, Family Division on February 7, 2002. William Johnson set forth his reasons for the decision to deny consent in an August 9, 2002 letter to the Stanleys.

Findings of fact and conclusion of law

Judicial review of the withholding of consent to an adoption is governed y MCL 710.45.

The statute provides in relevant part:

> (1) A court shall not allow the filing of a petition to adopt a child if the consent of a representative or court is required pursuant to section 43(1)(b), (c), or (d) of this chapter unless the petition is accompanied by the required consent or a motion as provided in subsection (2).
> (2) If an adoption petitioner has been unable to obtain the consent required by section 43 (1)(b), (c), or (d) of this chapter, the petitioner may file a motion with the court alleging that the decision to withhold consent was arbitrary and capricious…
> (5) Unless the petitioner establishes by clear and convincing evidence that the decision to withhold consent was arbitrary and capricious, the court shall deny the motion described in subsection (2) and dismiss the petition to adopt.

(6) If the court finds by clear and convincing evidence that the decision to withhold consent was arbitrary and capricious, the court may terminate the right of the appropriate court, child placing agency, or department and may enter further orders in accordance with this chapter or section 18 of chapter XIIA as the court considers appropriate.. In addition, the court may grant to the petitioner reimbursement for petitioner's costs of preparing, filing, and arguing the motion alleging the withholding of consent was arbitrary and capricious, including a reasonable allowance for attorney fees.

In re Cotton, 208 Mich App 180; 526 NW2d 601 (1994)m sets forth the standard the court must use in determining if the withholding of consent to an adoption is arbitrary and capricious.

> "[T]he focus is not whether the representative made the "correct" decision or whether the probate judge would have decided the issue differently than the representative, but whether the representative acted arbitrarily and capriciously in making the decision. Accordingly, the hearing under section 45 is not, as petitioners seem to suggest, and opportunity for a petitioner to make a case relative to why consent should have been granted, but rather is an opportunity to show that the representative acted arbitrarily and capriciously in withholding that consent...
>
> [T]he focus of such a hearing is not what reasons existed to authorize the adoption, but the reasons give by the representative for withholding consent to the adoption. That is, if there exist good reasons why consent should be granted and good reason why consent should be withhel, it cannot be said that the representative acted arbitrarily and capriciously in withholding that consent even though another individual, such as the probate juge, might

have decided the matter in favor of the petitioner. Rather, it is the absence of any good reason to withhold consent, not the presence of good reasons to grant it, that indicates that the representative was acting in an arbitrary and capricious manner."

The Stanleys also filed a Petition to Adopt and motion for hearing under MCL 710.45 for another foster child, Sebastian Couturier (02-661974-AM), which was heard concurrently with the Petition and Motion regarding Antoinetta Hernandez. The Court granted the Attorney General's Motion in Limine and limited the witnesses and testimony to the issue of the reasons given by William Johnson, for withholding consent to the Stanley's adoption of Antoïnetta Hernandez.

William Johnson testified that he withheld consent based upon the Stanley's failure to cooperate with CSSWC directives, failure to follow through with recommended medical care, lack of routine medical care or a child with special needs and inability to meet the child's substantial medical needs.

Petitioners, Mr. and Mrs. Stanley presented substantial evidence to support their position. Their evidence went primarily to the issue of whether the decision to withhold consent to adopt was correct. Under the standard articulated in the Cotton decision, this Court may not substitute its judgment for that of the decision-maker. Even if a clearly incorrect decision was made, the court is bound to uphold it unless petitioner presents by clear incorrect decision was made, the court is bound to uphold it unless petitioner presents by clear and convincing evidence that the decision was arbitrary or capricious. Petitioner counsel quoted the Black's Law Dictionary definition of arbitrary as "bring without reason or judgment; without fair substantial cause". Capricious is defined as "frivolous, fanciful; without factual support'. The arbitrary and capricious standard is an extremely difficult one to prove.

In this case, Mr. Johnson set forth reasons for his denial of consent to adopt in a letter dated August 9, 2002. He stated during testimony that one primary factor in his decision was the failure of the Stanleys to fully cooperate with CSSWC. He felt that the Stanleys sometime notified the agency of medical treatment after the fact rather than obtaining needed authorizations. He cited the situation involving an EEG for Sebastian Couturier, the other foster child placed with the Stanleys. The agency had referred the Stanleys to Dr. Forbes to coordinate Sebastian's medical care. Two days after seeing Dr. Forbes, the Stanleys took Sebastian to Dr. McCormick for an EEG without the knowledge or consent of Dr. Forbes or the agency. The Stanleys presented evidence that the EEG was authorized by Dr. McCormick and appropriate. Even if this is accurate, it does not address Mr. Johnson's concern. He specifically cited lack of cooperation as one factor in his decision. Clearly, the Stanleys did not fully cooperate with the agency in procurement of medical care.

The Stanleys also did not follow the agency recommendation that they have a psychological evaluation by someone approved by the agency. The Stanleys did obtain assessments done by Stanley Garwood on November 19, 2001.
(Petitioner's Exhibit 90 and Dr. Bridenbaugh on March 16, 2002 (Petitioner's Exhibit 3). These individuals were not approved by the agency nor did the Stanleys advise he agency beforehand that the assessments were being prepared. In response, the Stanleys attempted to establish that the assessments were done by qualified evaluators and supported their appropriateness as adoptive parents. Again, this goes to the correctness of Mr. Johnson's decision. It does not establish that they were cooperative with CSSWC. On the contrary, the actions of the Stanleys in obtaining the Garwood and Bridenbaugh assessments were in contravention of agency directives. Mr. Johnson stated that the agency should have driven the choice of the appropriate evaluator. Instead, the Stanleys decided to control the process. There no indication that Mr. Garwood was aware of

the agency concerns. All of the information he received came from the Stanleys. Mr. Johnson found the Garwood assessment inadequate.

Mr. Johnson testified that he was concerned about the level of cooperation because the agency, not the foster parents, has ultimate responsibility for a foster child. A foster parent is obligated to provide information about a child without being specifically requested to do so by the agency. CSSWC reported to Mr. Johnson that the Stanleys only provided information upon specific request.

Mr. Johnson also cited concerns about the medical treatment provided for Antoinetta. Specifically, in his letter of August 9, 2002, he mentioned the failure to obtain a RSV vaccine for Antoinetta at the time it was recommended by Dr. Perla on March 14, 2001. Antoinetta was later hospitalized for RSV. The Stanleys alternatively attempted to argue that the vaccine was too expensive, that Antoinetta may not have met the protocol for administration of RSV or that it was the doctor's failure that she did not receive the vaccine. None of their arguments were substantiated. Mr. Johnson testified that Medicaid covered Antoinetta so the cost of the vaccine should not have been prohibitive. The information given to Mr. Johnson was that the RSV vaccine was recommended to the Stanleys by Dr. Perla, it was not given and the child subsequently became ill with RSV, requiring hospitalization. Based upon that information, Mr. Johnson's concerns about medical care were valid. His decision to withhold consent to adopt cannot be determined to be arbitrary or capricious on the basis of that information.

Mr. Johnson testified that Antoinetta and Sebastian were taken to at least six (6) specialists, but well baby care was not provided. The Stanleys provided doctor letters (Petitioner's Exhibits 22 and 23) stating that the children were well cared for and progressing. Mr. Johnson's concern, however, was that both Antoinetta and Sebastian had SPECIAL NEEDS. He testified the Stanleys seemed overwhelmed by the complexity of the children's medical treatment and approached it in a disorganized, fragmented

manner. He characterized the medical treatment as "mismanaged". In some instances it was too much and in other too little. While none of the individual doctors expressed a concern, it is apparent that none of them had a complete picture of the medical treatment being provided or the number o doctors being consulted. Once the agency became aware of the approach taken by the Stanleys, they stepped in to coordinate and provide continuity. (Petitioner's Exhibit 35). Mr. Johnson's conclusion that "the extensive medical and developmental needs of these two young children were beyond your (the Stanleys) ability to provide," was reasonable given the information he received.

Mr. Johnson testified that the factors used to determine consent to adopt included the child's history, physical, psychological and emotional needs, placement, and the best interests factors under the Adoption Code. The criteria articulated by Mr. Johnson are reasonable and appropriate. He considered that Antoinetta was placed with the Stanleys in March 2001 and removed in September 2001. He did not reach his decision regading consent until January 2002. He felt that the bonding between Antoinetta and the Stanleys was disrupted and there was no compelling reason to return her. Mr. Johnson was not biased toward the Stanleys. He made the decision to return Sebastian to their home based on the recommendation of the Wayne County Foster care review board. Sebastian was later removed when it was determined that he was a Kent County Court Ward rather than a MCI ward.

Mr. Johnson was not required to make an independent examination of the information he received from the various parties. He testified that he reviewed voluminous information from the Stanleys as well as the agency reports in making his decision regarding Antoinetta. Mr. Johnson acknowledged that both the Wayne and Kent County Foster Care Review Boards recommended return of the children to the Stanleys. He testified that the review board recommendations related to foster care and not to adoption (Petitioner's Exhibit 35). He also considered the information related to Sebastian to determine the appropriateness of the Stanleys household and their care of both children. The Kent

County GAL recommended that if the Stanleys adopted Sebastian, they should not adopt any other children. Catholic Social Services of Wayne County recommended that the consent to adopt Antoinetta be denied. Mr. Johnson considered both positive and negative information about the Stanley in making his decision. He testified that he had reservations about the Stanleys long-term ability to care for Antoinetta.

Mr. Johnson's reliance on the CSSWC reports and recommendation was not unfounded. The Agency's responsibility is to protect the best interests of the minor child.

The Stanley's, of course, only provided positive information about themselves. The agency is charged with taking a more objective view. Although the Stanleys felt the agency was biased against them, there is nothing to substantiate their concerns. Their difficulty in following agency directives was the primary reason for the negative recommendation.

The Stanleys did not establish by clear and convincing evidence that Mr. Johnson's decision was arbitrary as being without reason or judgment. Mr. Johnson's decision was carefully considered and base upon both positive and negative information about the Stanley's. The decision was also not capricious, defined as frivolous, fanciful, and without factual support. Instead it was based upon the agency's concerns and his own careful analysis. After review of the testimony and evidence the court's GAL Abbie Shuman recommended that the court deny the Stanley's Motion.

Even if this court disagrees with Mr. Johnson's decision, it cannot be determined that it was arbitrary and capricious. The evidence presented by the Stanley's established that they were appropriate foster parents. Indeed, they have been found to be appropriate adoptive parents by this court in the past. They are sincere in their desire to adopt Antoinetta. They have not however, met the burden of proof regarding their motion under MCL 710.45 and it is hereby **DENIED**.

IT IS HEREBY ORDERED that the adoption petition in this matter is hereby dismissed.

IT IS SO ORDERED.

/s/LINDA S. HALLMARK

LINDA S. HALLMARK
Dated: NOV 08 2002

A TRUE COPY
G.WILLIAM CADDELL
Oakland County Clerk Register of Deeds
By:/S/_____
Deputy

(APPENDIX C)

ORDER
Entered: February 27, 2004

125345

MICHIGAN SUPREME COURT
Lansing , Michigan

Maura D. Corrigan
Chief Jusice

Michael F. Cavannagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, JR.
Stephen J. Markman,
Justices

In re S.C. and A.H., Minors.

FRANK J. STANLEY and PATTI L. STANLEY,
Petitioners-Appellants,

V

SC: 125345
COA: 245206
Oakland CC
Family Division:
02-661974-AM

JUDGE NANARUTH CARPENTER,
MICHIGAN CHILDREN'S INSTITUTE, and
CATHOLIC SOCIAL SERVICES OF WAYNE COUNTY,
Respondents-Appellees,

---/

On order of the Court, the application for leave to appeal the October 21, 2003 judgment of the Court of Appeals is considered, and it is DENIED, because we are

not persuaded that the question presented should be reviewed by this Court.

S0224

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

February 27, 2004 **/s/ Corbin R. Davis**

(APPENDIX D)

ORDER
Entered: April 23, 2004

125345 (102)

MICHIGAN SUPREME COURT
Lansing , Michigan

Maura D. Corrigan
Chief Jusice

Michael F. Cavannagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, JR.
Stephen J. Markman,
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SC: 125345
COA: 245206
Oakland CC
Family Division:
02-661974-AM

JUDGE NANARUTH CARPENTER,
MICHIGAN CHILDREN'S INSTITUTE, and
CATHOLIC SOCIAL SERVICES OF WAYNE COUNTY,
Respondents-Appellees,

---/

On order of the Court, the motion for reconsideration of this Court's order of February 27, 2004 is considered, and it is DENIED, because it does not appear that the order was entered erroneously.

B0420

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

April 23, 2004 **/s/ Corbin R. Davis**